HOUSE BILL 19-1313

A BILL FOR AN ACT

CONCERNING PLANS TO REDUCE CARBON DIOXIDE EMISSIONS BY QUALIFYING RETAIL UTILITIES, AND, IN CONNECTION THEREWITH, ENCOURAGING THE ACHIEVEMENT OF ZERO CARBON DIOXIDE EMISSIONS BY 2050 AND MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Section 1 of the bill repeals laws that allow an electric utility to own, as rate-based property, new eligible energy resources without...
competitive bidding if certain conditions are satisfied.

Section 2 supplements the existing renewable energy standards statute by establishing targets for the reduction of carbon dioxide emissions from electricity generation by utilities serving more than 500,000 customers, with the opportunity for other utilities to opt in. The targets are:

! By 2030, an 80% reduction in carbon dioxide emission levels compared to 2005 levels; and
! For 2050 and thereafter, a goal of a 100% reduction in carbon dioxide emission levels.

Section 2 also directs qualifying retail utilities to submit plans to the public utilities commission (PUC) as part of their ongoing resource acquisition planning process to address the clean energy targets. A clean energy plan must detail the actions and investments the utility intends to undertake, including specifying the new resources and infrastructure proposed to be used; the anticipated effects of the plan on the safety, reliability, and resilience of the overall electric system; the methods proposed for measuring carbon dioxide reductions; and the costs of implementation, which must be reasonable.

The approval process also includes participation by the division of administration within the department of public health and environment regarding the measurement of carbon dioxide emission reductions and predictions as to whether the clean energy plan will achieve the desired reductions.

A utility implementing a clean energy plan may recover its costs of implementation through rates, as approved by the PUC, and own any generating resources and infrastructure necessary to effectuate the plan. The utility is required to use a competitive bidding process to fill the cumulative resource need identified in its next electric resource plan that includes a clean energy plan filed after January 1, 2020.

Each utility that receives approval of a clean energy plan is required to report to the governor, the PUC, and the air quality control commission on a list of matters, including its progress in implementing the plan and in reducing carbon dioxide emissions.

The bill strengthens an existing provision requiring electric resource acquisition decisions to be made with consideration of "best value" employment metrics and the use of Colorado labor by requiring a utility to obtain and provide to the PUC relevant documentation on these topics, including the availability of apprenticeship programs registered with the United States department of labor.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 40-2-114, amend (2)
as follows:

40-2-114. Disposition of fees collected - telecommunications utility fund - fixed utility fund. (2) Moneys in the funds created in subsection (1) of this section shall be expended only to defray the full amount determined by the general assembly for the administrative expenses of the commission for the supervision and regulation of the public utilities paying the fees; and for the financing of the office of consumer counsel created in article 6.5 of this title; and for the costs incurred by all agencies participating in any process pursuant to section 40-2-125.5. The state treasurer shall retain any unexpended balance remaining in either fund at the end of any fiscal year to defray the administrative expenses of the commission during subsequent fiscal years, and the executive director of the department of revenue shall take any such unexpended balance into account when computing the percentage upon which fees for the ensuing fiscal year will be based.

SECTION 2. In Colorado Revised Statutes, 40-2-124, amend (1) introductory portion; and repeal (1)(f)(I) as follows:

40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration. (1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, is a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, is subject to the rules established under this article ARTICLE 2 by the commission. No additional regulatory authority is provided to the commission other than that specifically
contained in this section. In accordance with article 4 of title 24, C.R.S.,
the commission shall revise or clarify existing rules to establish the
following:

(f) Policies for the recovery of costs incurred with respect to these
standards for qualifying retail utilities that are subject to rate regulation
by the commission. These policies must provide incentives to qualifying
retail utilities to invest in eligible energy resources and must include:

(I) Allowing a qualifying retail utility to develop and own as
utility-rate-based property up to twenty-five percent of the total new
eligible energy resources the utility acquires from entering into power
purchase agreements and from developing and owning resources after
March 27, 2007, if the new eligible energy resources proposed to be
developed and owned by the utility can be constructed at reasonable cost
compared to the cost of similar eligible energy resources available in the
market. The qualifying retail utility shall be allowed to develop and own
as utility-rate-based property more than twenty-five percent but not more
than fifty percent of total new eligible energy resources acquired after
March 27, 2007, if the qualifying retail utility shows that its proposal
would provide significant economic development, employment, energy
security, or other benefits to the state of Colorado. The qualifying retail
utility may develop and own these resources either by itself or jointly with
other owners, and, if owned jointly, the entire jointly owned resource
shall count toward the percentage limitations in this subparagraph (I). For
the resources addressed in this subparagraph (I), the qualifying retail
utility shall not be required to comply with the competitive bidding
requirements of the commission’s rules; except that nothing in this
subparagraph (f) shall preclude the qualifying retail utility from bidding
to own a greater percentage of new eligible energy resources than permitted by this subparagraph (I). In addition, nothing in this subparagraph (I) shall prevent the commission from waiving, repealing, or revising any commission rule in a manner otherwise consistent with applicable law.

SECTION 3. In Colorado Revised Statutes, add 40-2-125.5 as follows:

40-2-125.5. Carbon dioxide emission reductions - goal to eliminate by 2050 - legislative declaration - interim targets - submission and approval of plans - definitions - cost recovery - reports. (1) Legislative declaration. The General Assembly finds and declares that:

(a) It is a matter of statewide importance to promote the development of cost-effective clean energy and new technologies and reduce the carbon dioxide emissions from the Colorado electric generating system;

(b) The creation of a low-cost, reliable, and clean electricity system is critical to achieving the level of greenhouse gas emissions necessary to avoid the worst impacts of climate change and advancing a robust and efficient low-carbon economy for the State of Colorado and the nation;

(c) Technology advancement has already allowed Colorado to achieve reductions in carbon dioxide emissions from the electric utility sector, and continued technology development is key to extend progress toward a reliable, low-cost, clean energy future;

(d) Alternative financing mechanisms may result in lower
COSTS TO ELECTRIC UTILITY CUSTOMERS; THEREFORE, IT IS HELPFUL TO PROVIDE ALTERNATIVE FINANCING MECHANISMS THAT UTILITIES MAY USE TO REDUCE THE TOTAL AMOUNT OF COSTS BEING INCLUDED IN CUSTOMER RATES RESULTING FROM ACCELERATING THE RETIREMENT OF ELECTRIC GENERATING FACILITIES; AND

(e) A BOLD CLEAN ENERGY POLICY WILL SUPPORT THIS PROGRESS AND ALLOW COLORADANS TO ENJOY THE BENEFITS OF RELIABLE CLEAN ENERGY AT AN AFFORDABLE COST.

(2) Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CLEAN ENERGY PLAN" MEANS A PLAN FILED BY A QUALIFYING RETAIL UTILITY AS PART OF ITS ELECTRIC RESOURCE PLAN TO REDUCE THE QUALIFYING RETAIL UTILITY'S CARBON DIOXIDE EMISSIONS ASSOCIATED WITH ELECTRICITY SALES TO THE QUALIFYING RETAIL UTILITY'S ELECTRICITY CUSTOMERS BY EIGHTY PERCENT FROM 2005 LEVELS BY 2030, AND THAT SEeks TO ACHIEVE PROVIDING ITS CUSTOMERS WITH ENERGY GENERATED FROM ONE-HUNDRED-PERCENT CLEAN ENERGY RESOURCES BY 2050.

(b) "CLEAN ENERGY RESOURCE" MEANS ANY ELECTRICITY-GENERATING TECHNOLOGY THAT GENERATES OR STORES ELECTRICITY WITHOUT EMITTING CARBON DIOXIDE INTO THE ATMOSPHERE. CLEAN ENERGY RESOURCES INCLUDE, WITHOUT LIMITATION, ELIGIBLE ENERGY RESOURCES AS DEFINED IN SECTION 40-2-124 (1)(a).

(c) "QUALIFYING RETAIL UTILITY" MEANS A RETAIL UTILITY PROVIDING ELECTRIC SERVICE TO MORE THAN FIVE HUNDRED THOUSAND CUSTOMERS IN THIS STATE OR ANY OTHER ELECTRIC UTILITY THAT OPTS IN PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION.
Clean energy targets. (a) In addition to the other requirements of this section, a qualifying retail utility shall meet the following clean energy targets:

(I) By 2030, the qualifying retail utility shall reduce the carbon dioxide emissions associated with electricity sales to the qualifying retail utility’s electricity customers by eighty percent from 2005 levels.

(II) For the years 2050 and thereafter, or sooner if practicable, the qualifying retail utility shall seek to achieve the goal of providing its customers with energy generated from one-hundred-percent clean energy resources so long as doing so is technically and economically feasible, in the public interest, and consistent with the requirements of this section.

(III) The qualifying retail utility shall retire renewable energy credits established under section 40-2-124 (1)(d), in the year generated, by any eligible energy resources used to comply with the requirements of this section.

(b) Any other electric public utility may opt into the full terms of this entire section upon notification to the commission.

Submission and approval of plans. (a) The first electric resource plan that a qualifying retail utility files with the commission after January 1, 2020, must include a clean energy plan that will achieve the clean energy target set forth in subsection (3)(a)(I) of this section and make progress toward the one-hundred-percent clean energy goal set forth in subsection (3)(a)(II) of this section in accordance with the following:

(I) The electric resource plan containing the clean
ENERGY PLAN MUST UTILIZE A RESOURCE ACQUISITION PERIOD THAT EXTENDS THROUGH 2030.

(II) The clean energy plan submitted to the commission must set forth a plan of actions and investments by the qualifying retail utility projected to achieve compliance with the clean energy targets in subsections (3)(a)(I) and (3)(a)(II) of this section and that result in an affordable, reliable, and clean electric system.

(III) In the electric resource plan that includes the clean energy plan, the qualifying retail utility shall clearly distinguish between the set of resources necessary to meet customer demands in the resource acquisition period and the additional clean energy plan activities that may be undertaken to meet the clean energy target in subsection (3)(a)(I) of this section, which may create an additional resource need for the clean energy plan. These activities may include retirement of existing generating facilities, changes in system operation, or any other necessary actions.

(IV) After conducting any procurement process pursuant to subsection (5)(b) of this section or otherwise, the qualifying retail utility shall set forth the actions and investments required to fill the additional resource need identified for the clean energy plan to satisfy the clean energy target in subsection (3)(a)(I) of this section. These actions and investments may include development of new clean energy resources, development of new transmission and other supporting infrastructure, and clean energy resource acquisitions. Any
NEW TRANSMISSION DEVELOPMENT IS SUBJECT TO EXISTING COMMISSION AND STAKEHOLDER TRANSMISSION PLANNING PROCESSES, AS APPLICABLE.

(V) The clean energy plan must describe the effect of the actions and investments included in the clean energy plan on the safety, reliability, renewable energy integration, and resilience of electric service in the state of Colorado.

(VI) The clean energy plan must set forth the projected cost of its implementation and anticipated reductions in carbon dioxide and other emissions.

(VII) If the clean energy plan includes accelerated retirement of any existing generating facilities, the clean energy plan must include a workforce transition plan for utility workers impacted by any clean energy plan, and the qualifying retail utility may propose a cost-recovery mechanism to recover the prudently incurred costs of any workforce transition plan. The workforce transition plan must include, to the extent feasible, estimates of:

(A) The number of workers employed by the utility or a contractor of the utility at the electric generating facility;

(B) The total number of existing workers with jobs that will be retained and the total number of existing workers with jobs that will be eliminated due to the retirement of the electric generating facility;

(C) With respect to the existing workers with jobs that will be eliminated due to the retirement of the electric generating facility, the total number and number by job classification of workers for whom employment will end.
WITHOUT BEING OFFERED OTHER EMPLOYMENT BY THE UTILITY; THE WORKERS WILL RETIRE AS PLANNED, BE OFFERED EARLY RETIREMENT, OR LEAVE VOLUNTARILY; THE WORKERS WILL BE RETAINED BY BEING TRANSFERRED TO OTHER ELECTRIC GENERATING FACILITIES OR OFFERED OTHER EMPLOYMENT BY THE UTILITY; AND THE WORKERS WILL BE RETRAINED TO CONTINUE TO WORK FOR THE UTILITY IN A NEW JOB CLASSIFICATION;

(D) IF THE UTILITY IS REPLACING THE ELECTRIC GENERATING FACILITY BEING RETIRED WITH A NEW ELECTRIC GENERATING FACILITY: THE NUMBER OF WORKERS FROM THE RETIRED ELECTRIC GENERATING FACILITY THAT WILL BE OFFERED EMPLOYMENT AT THE NEW ELECTRIC GENERATING FACILITY; AND THE NUMBER OF JOBS AT THE NEW ELECTRIC GENERATING FACILITY THAT WILL BE OUTSOURCED TO SUBCONTRACTORS. THE UTILITY SHALL DEVELOP A TRAINING OR APPRENTICESHIP PROGRAM, UNDER THE TERMS OF AN APPLICABLE COLLECTIVE BARGAINING AGREEMENT, IF ANY, FOR THE MAINTENANCE AND OPERATION OF ANY NEW COMBINATION GENERATION AND STORAGE FACILITY OWNED BY THE UTILITY THAT DOES NOT EMIT CARBON DIOXIDE, TO WHICH FACILITY DISPLACED WORKERS MAY TRANSFER AS APPROPRIATE.

(VIII) IF THE MINIMUM AMOUNTS OF ELECTRICITY FROM ELIGIBLE ENERGY RESOURCES SET FORTH IN SECTION 40-2-124 (1)(c) ARE SATISFIED, A QUALIFYING RETAIL UTILITY MAY PROPOSE TO USE UP TO ONE-HALF OF THE FUNDS COLLECTED ANNUALLY UNDER SECTION 40-2-124 (1)(g), AS WELL AS ANY ACCRUED FUNDS, TO RECOVER THE INCREMENTAL COST OF CLEAN ENERGY RESOURCES AND THEIR DIRECTLY RELATED INTERCONNECTION FACILITIES. THE UTILITY MAY ACCOUNT FOR THESE FUNDS IN CALCULATING THE COST OF THE PLAN.
(b) The division of administration in the Department of Public Health and Environment shall participate in any proceeding seeking approval of a clean energy plan developed by a qualifying retail utility pursuant to this section. The division shall describe the methods of measuring carbon dioxide emissions and shall verify the projected carbon dioxide emission reductions as a result of the clean energy plan.

(c) After consulting with the air quality control commission, the division of administration shall determine whether a clean energy plan as filed under this section will result in an eighty-percent reduction, relative to 2005 levels, in carbon dioxide emissions from the qualifying retail utility’s Colorado electricity sales by 2030 and is otherwise consistent with any greenhouse gas emission reduction goals established by the state of Colorado. The division shall publish, and shall report to the public utilities commission, the division’s calculation of carbon dioxide emission reductions attributable to any approved clean energy plan. Nothing in the division’s engagement in this process shall be construed to diminish or override the commission’s authority under this title 40.

(d) The commission shall approve the clean energy plan if the commission finds it to be in the public interest and consistent with the clean energy target in subsection (3)(a)(I) of this section, and the commission may modify the plan if the modification is necessary to ensure that the plan is in the public interest. In evaluating whether a clean energy plan submitted to the commission is in the public interest, the commission shall
CONSIDER THE FOLLOWING FACTORS, AMONG OTHER RELEVANT FACTORS AS DEFINED BY THE COMMISSION:

(I) REDUCTIONS IN CARBON DIOXIDE AND OTHER EMISSIONS THAT WILL BE ACHIEVED THROUGH THE CLEAN ENERGY PLAN AND THE ENVIRONMENTAL AND HEALTH BENEFITS OF THOSE REDUCTIONS;

(II) THE FEASIBILITY OF THE CLEAN ENERGY PLAN AND THE CLEAN ENERGY PLAN'S IMPACT ON THE RELIABILITY AND RESILIENCE OF THE ELECTRIC SYSTEM. THE COMMISSION SHALL NOT APPROVE ANY PLAN THAT DOES NOT PROTECT SYSTEM RELIABILITY.

(III) WHETHER THE CLEAN ENERGY PLAN WILL RESULT IN A REASONABLE COST TO CUSTOMERS, AS EVALUATED ON A NET PRESENT VALUE BASIS. IN EVALUATING THE COST IMPACTS OF THE CLEAN ENERGY PLAN, THE COMMISSION SHALL CONSIDER THE EFFECT ON CUSTOMERS OF THE PROJECTED COSTS ASSOCIATED WITH THE PLAN AS SET FORTH IN SUBSECTION (4)(a)(VI) OF THIS SECTION AS WELL AS ANY PROJECTED SAVINGS ASSOCIATED WITH THE PLAN, INCLUDING PROJECTED AVOIDED FUEL COSTS.

(e) IF THE COMMISSION FINDS THAT APPROVAL OF THE CLEAN ENERGY PLAN IS NOT IN THE PUBLIC INTEREST, OR IF THE COMMISSION MODIFIES THE PLAN, THE UTILITY MAY CHOOSE TO SUBMIT AN AMENDED PLAN TO THE COMMISSION FOR APPROVAL IN LIEU OF HAVING NO PLAN OR IMPLEMENTING THE MODIFIED PLAN. NO CLEAN ENERGY PLAN IS EFFECTIVE WITHOUT COMMISSION APPROVAL, AND A QUALIFYING RETAIL UTILITY SHALL NOT BE REQUIRED TO SUBMIT MORE THAN ONE PLAN FOR COMMISSION APPROVAL.

(5) Regulatory matters. (a) Ensuring retail rate stability.

(I) THE COMMISSION SHALL ESTABLISH A MAXIMUM ELECTRIC RETAIL
Rate Impact of One and One-Half Percent of the Total Electric Bill Annually for Each Customer for Implementation of the Approved Additional Clean Energy Plan Activities, Consistent with This Subsection (5). Nothing in this subsection (5)(a) supersedes subsection (3)(a)(I) of this section.

(II) A qualifying retail utility shall collect revenues for the additional clean energy plan activities through a clean energy plan revenue rider assessed on a percentage basis on all retail customer bills, as deemed prudent by the commission. The revenue rider may be established as early as the year following approval of a clean energy plan by the commission, and the qualifying retail utility may propose a commencement date and level no greater than the maximum electric retail rate impact. The revenue rider shall afford the qualifying retail utility cost recovery treatment up to the maximum electric retail rate impact until the first rate case following the final implementation of the clean energy plan, at which time the remaining costs and savings associated with the clean energy plan will be incorporated into base rates. The qualifying retail utility may propose to adjust the level of the retail rate rider over time so long as it does not exceed the maximum retail rate impact and as deemed prudent by the commission. Nothing in this subsection (5) affects the commission’s authority to evaluate the prudence of costs associated with approved clean energy plan activities.

(III) The clean energy plan revenue rider will be utilized for costs of a qualifying retail utility’s clean energy plan
COSTS ASSOCIATED WITH THE CAPITAL INVESTMENTS AND OPERATING AND RELATED EXPENSES WITHIN THE OVERALL APPROVED RESOURCE PORTFOLIO NECESSARY TO FULLY SATISFY THE RESOURCE NEED IDENTIFIED FOR THE ELECTRIC RESOURCE PLAN WITHOUT THE CLEAN ENERGY PLAN;

(C) THE INCREMENTAL COSTS OF ELIGIBLE ENERGY RESOURCES RECOVERED WITH FUNDS COLLECTED UNDER SECTION 40-2-124 (1)(g);

AND

(D) THE INCREMENTAL COSTS OF ANY CLEAN ENERGY RESOURCES AND THEIR DIRECTLY RELATED INTERCONNECTION FACILITIES THAT, SUBJECT TO COMMISSION APPROVAL, ARE RECOVERED WITH FUNDS COLLECTED UNDER SECTION 40-2-124 (1)(g) IN ACCORDANCE WITH SUBSECTION (4)(a)(VIII) OF THIS SECTION. SAVINGS ASSOCIATED WITH THE PLAN WILL RETURN TO CUSTOMERS THROUGH EXISTING RATE RIDERS AND BASE RATE ADJUSTMENTS.

(IV) THE CLEAN ENERGY PLAN REVENUE RIDER SHALL AFFORD CUSTOMERS CERTAINTY ON THE MAXIMUM RATE IMPACT OF THE APPROVED ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THROUGH AT LEAST CALENDAR YEAR 2030. ANNually, THE QUALIFYING RETAIL UTILITY SHALL FILE A REPORT WITH THE COMMISSION INDICATING, AT A MINIMUM:

(A) THE AMOUNT OF RIDER COLLECTIONS;

(B) THE REVENUE REQUIREMENT ASSOCIATED WITH THE APPROVED ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES TO BE PAID FOR FROM THE
RIDER COLLECTIONS;

(C) ANY POSITIVE OR NEGATIVE RIDER ACCOUNT BALANCE;

(D) INTEREST EXPENSE ASSOCIATED WITH THE REVENUE RIDER BALANCE; AND

(E) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.

(V) IN THE FIRST RATE CASE FOLLOWING THE FINAL IMPLEMENTATION OF THE CLEAN ENERGY PLAN, THE COMMISSION SHALL CONDUCT A FINAL RECONCILIATION OF THE CLEAN ENERGY PLAN REVENUE RIDER AND DETERMINE HOW TO ACCOUNT FOR ANY POSITIVE OR NEGATIVE RIDER BALANCE. IN THE MANNER DETERMINED BY THE COMMISSION, ANY REMAINING POSITIVE BALANCE SHALL BE RETURNED TO CUSTOMERS OR USED TO REDUCE CUSTOMER RATES AND ANY NEGATIVE BALANCE SHALL BE INCORPORATED INTO THE QUALIFYING RETAIL UTILITY’S RATES.

(b) THE QUALIFYING RETAIL UTILITY SHALL UTILIZE A COMPETITIVE BIDDING PROCESS, AS DEFINED BY THE COMMISSION IN RULES, TO PROCURE ANY ENERGY RESOURCES TO FILL THE CUMULATIVE RESOURCE NEED DERIVED FROM THE ELECTRIC RESOURCE PLAN AND THE CLEAN ENERGY PLAN IN SUBSECTION (4)(a)(III) OF THIS SECTION. THE COMMISSION SHALL ALLOW THE QUALIFYING RETAIL UTILITY, INCLUSIVE OF ANY OWNERSHIP BY ITS AFFILIATES, TO OWN A TARGET OF FIFTY PERCENT OF THE ENERGY AND CAPACITY ASSOCIATED WITH THE CLEAN ENERGY RESOURCES AND ANY OTHER ENERGY RESOURCES DEVELOPED OR ACQUIRED TO MEET THE RESOURCE NEED, AS WELL AS ALL ASSOCIATED INFRASTRUCTURE, IF THE COMMISSION FINDS THE COST OF UTILITY OR AFFILIATE OWNERSHIP OF THE GENERATION ASSETS COMES AT A REASONABLE COST AND RATE IMPACT. UTILITY OWNERSHIP MAY COME FROM UTILITY OR AFFILIATE SELF-BUILDS, BUILD-TRANSFERS FROM
INDEPENDENT POWER PRODUCERS, OR SALES OF EXISTING ASSETS FROM
INDEPENDENT POWER PRODUCERS OR SIMILAR COMMERCIAL
ARRANGEMENTS.

(c) Any actions, including transmission development,
taken by the qualifying retail utility shall be presumed prudent
to the extent those actions are consistent with the
implementation of an approved clean energy plan.

(d) For the purposes of this section, the clean energy
target evaluation will be based upon the qualifying retail
utility’s electricity sales within its electric service territory
as it existed on January 1, 2019. In the event of a significant
acquisition, the qualifying retail utility may file within one
year after the acquisition an additional clean energy plan to
address that acquisition, and the commission shall consider the
additional clean energy plan consistent with the goals of this
section.

(e) The commission may, on its own motion or upon
application by a qualifying retail utility, amend an approved
clean energy plan if amendment is necessary to ensure the
reliability and resilience of the electric system. The commission
may require the qualifying retail utility to provide such
periodic reports on the reliability and resiliency of the electric
system as it may deem appropriate to ensure the clean energy
plan does not adversely impact reliability or resiliency.

(f) (I) A clean energy plan voluntarily filed by a
municipal utility or a cooperative electric association that has
voted to exempt itself from regulation by the commission
Pursuant to Article 9.5 of this Title 40 shall be deemed approved by the Commission as filed if:

(A) The Division of Administration, in consultation with the Commission, verifies that the plan demonstrates that, by 2030, the municipal utility or cooperative electric association will achieve at least an eighty percent reduction in greenhouse gas emissions caused by the entity’s Colorado electricity sales relative to 2005 levels; and

(B) The clean energy plan has previously been approved by a vote of the entity’s governing body.

(ii) Voluntary submission of a clean energy plan by a municipal utility or a cooperative electric association does not alter the entity’s regulatory status with respect to the Commission, including under Article 9.5 of this Title 40.

(g) Nothing in this subsection (5) precludes the use of bonds as a mechanism for recovering utility capital in a retired electric generating facility.

(6) Reports. One year after approval of any electric resource plan that incorporates a clean energy plan, the qualifying retail utility shall prepare a report to the Governor, the General Assembly, the Public Utilities Commission, and the Air Quality Control Commission outlining progress toward the clean energy targets set forth in this section. The report must set forth the clean energy resources developed under any clean energy plan, the cost and customer impact of those clean energy resources, the effect of any approved clean energy plan on system reliability, and any other relevant information.
REPORT MUST ALSO IDENTIFY THE NEED FOR NEW OR ADDITIONAL TECHNOLOGY DEVELOPMENT NECESSARY TO ACHIEVE THE CLEAN ENERGY TARGETS OF THIS SECTION.

(7) **Future electric resource plans.** Any electric resource plan submitted to the commission after approval of the clean energy plan must include an update on the progress made toward the approved clean energy plan, as well as actions and investments by the qualifying retail utility projected to achieve compliance with the emission reduction target identified in subsection (3)(a)(I) of this section and make progress toward the one-hundred-percent clean energy goal set forth in subsection (3)(a)(II) of this section. The commission may solicit input from the division of administration for assistance in evaluating the emission reductions associated with any future electric resource plan and consistent with the clean energy targets of this section. The commission shall review the qualifying retail utility’s actions and investments in accordance with the standards set forth in subsection (4)(d) of this section.

(8) **Regional transmission investigation.** The commission shall open an investigatory proceeding for purposes of evaluating and considering the costs and benefits associated with regional transmission organizations, energy imbalance markets, joint tariffs, and power pools.

SECTION 4. In Colorado Revised Statutes, amend 40-2-129 as follows:

40-2-129. New resource acquisitions - factors in determination - local employment - "best value" metrics. (1) (a) When evaluating
electric resource acquisitions and requests for a certificate of convenience and necessity for construction or expansion of generating facilities, including but not limited to pollution control or fuel conversion upgrades and conversion of existing coal-fired plants to natural gas plants, the commission shall consider, on a qualitative basis, factors that affect employment and IN ALL DECISIONS INVOLVED IN ELECTRIC RESOURCE ACQUISITION PROCESSES, BEST VALUE REGARDING EMPLOYMENT OF COLORADO LABOR, AS DEFINED IN SECTION 8-17-101 (2)(a), AND POSITIVE IMPACTS ON the long-term economic viability of Colorado communities. To this end, the commission shall require utilities to request OBTAIN AND PROVIDE TO THE COMMISSION the following information regarding "best value" employment metrics: The availability of training programs, including training through apprenticeship programs registered with the United States department of labor, LABOR'S office of apprenticeship and training OR BY STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THAT OFFICE; employment of Colorado workers LABOR as compared to importation of out-of-state workers; long-term career opportunities; and industry-standard wages, health care, and pension benefits. When a utility proposes to construct new facilities of its own, the utility shall supply similar information to the commission. (b) ANY ELECTRIC RESOURCE ACQUISITION DECISION MUST BE BASED IN PART ON REVIEW OF THE BEST VALUE EMPLOYMENT METRICS CRITERIA SET FORTH IN ANY SOLICITATION DOCUMENT. THE COMMISSION SHALL NOT APPROVE ANY ELECTRIC RESOURCE PLAN, ACQUISITION, OR POWER PURCHASE AGREEMENT THAT FAILS TO EITHER: (I) PROVIDE THE BEST VALUE EMPLOYMENT METRICS DOCUMENTATION SPECIFIED IN THE SOLICITATION DOCUMENT; OR
(II) IN THE ALTERNATIVE, CERTIFY COMPLIANCE WITH OBJECTIVE
BEST VALUE EMPLOYMENT METRICS PERFORMANCE STANDARDS SET FORTH
IN THE SOLICITATION DOCUMENT.

(c) THE COMMISSION MAY WAIVE THE REQUIREMENTS OF THIS
SECTION IF A UTILITY AGREES TO USE A PROJECT LABOR AGREEMENT FOR
CONSTRUCTION OR EXPANSION OF A GENERATING FACILITY.

(2) FOLLOWING DEVELOPMENT OR ACQUISITION OF A GENERATING
FACILITY BY A UTILITY, FOR ALL GENERATING FACILITIES OWNED BY THE
UTILITY THAT DO NOT EMIT CARBON DIOXIDE, THE UTILITY SHALL USE
UTILITY EMPLOYEES OR QUALIFIED CONTRACTORS IF THE CONTRACTORS'
EMPLOYEES HAVE ACCESS TO AN APPRENTICESHIP PROGRAM REGISTERED
WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF
APPRENTICESHIP AND TRAINING OR BY A STATE APPRENTICESHIP COUNCIL
RECOGNIZED BY THAT OFFICE; EXCEPT THAT THIS APPRENTICESHIP
REQUIREMENT DOES NOT APPLY TO:

(a) THE DESIGN, PLANNING, OR ENGINEERING OF THE
INFRASTRUCTURE;

(b) MANAGEMENT FUNCTIONS TO OPERATE THE INFRASTRUCTURE;

OR

(c) ANY WORK INCLUDED IN A WARRANTY.

(3) THE PROVISIONS OF THIS SECTION REGARDING BEST VALUE
EMPLOYMENT METRICS DO NOT APPLY TO PROJECTS INVOLVING RETAIL
DISTRIBUTED GENERATION, AS DEFINED IN SECTION 40-2-124 (1)(a)(VIII)

SECTION 5. In Colorado Revised Statutes, add 40-2-132 as
follows:

40-2-132. Distributed generation - rights of retail electric
utility customers. A RETAIL ELECTRIC UTILITY CUSTOMER IS ENTITLED TO
GENERATE, CONSUME, STORE, AND EXPORT ELECTRICITY PRODUCED FROM
ELIGIBLE ENERGY RESOURCES TO THE ELECTRIC GRID THROUGH THE USE
OF CUSTOMER-SITED RETAIL DISTRIBUTED GENERATION AS DEFINED IN
SECTION 40-2-124 (1)(a)(VIII), SUBJECT TO RELIABILITY STANDARDS,
INTERCONNECTION RULES, AND PROCEDURES AS DETERMINED BY THE
COMMISSION.

SECTION 6. In Colorado Revised Statutes, add article 41 to title
40 as follows:

ARTICLE 41
Colorado Energy Impact Bond Act

40-41-101. Short title. The short title of this article 41 is
the "COLORADO ENERGY IMPACT BOND ACT".

40-41-102. Definitions. As used in this article 41, unless the
context otherwise requires:

(1) "ADJUSTMENT MECHANISM" MEANS A FORMULA-BASED
MECHANISM FOR MAKING AUTOMATIC ADJUSTMENTS TO CO-EI CHARGES
AUTHORIZED IN A FINANCING ORDER AND FOR MAKING ANY ADJUSTMENTS
THAT ARE NECESSARY TO CORRECT FOR OVERCOLLECTION OR
UNDERCOLLECTION OF SUCH CHARGES OR OTHERWISE ENSURE THE TIMELY
AND COMPLETE PAYMENT OF THE CO-EI BONDS AND ALL FINANCING
COSTS.

(2) "ANCILLARY AGREEMENT" MEANS ANY BOND, INSURANCE
POLICY, LETTER OF CREDIT, RESERVE ACCOUNT, SURETY BOND, INTEREST
RATE LOCK OR SWAP ARRANGEMENT, HEDGING ARRANGEMENT, LIQUIDITY
OR CREDIT SUPPORT ARRANGEMENT, OR OTHER FINANCIAL ARRANGEMENT
ENTERED INTO IN CONNECTION WITH CO-EI BONDS THAT IS DESIGNED TO
PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE CO-EI BONDS OR TO MITIGATE THE RISK OF AN INCREASE IN INTEREST RATES.

(3) "ASSIGNEE" MEANS ANY PERSON TO WHICH AN INTEREST IN CO-EI PROPERTY IS SOLD, ASSIGNED, TRANSFERRED, OR CONVEYED, OTHER THAN AS SECURITY, AND ANY SUCCESSOR TO OR SUBSEQUENT ASSIGNEE OF SUCH A PERSON.

(4) "BONDHOLDER" MEANS ANY HOLDER OR OWNER OF CO-EI BONDS.

(5) "CO-EI BONDS" MEANS COLORADO ENERGY IMPACT BONDS THAT ARE LOW-COST CORPORATE SECURITIES, SUCH AS SENIOR SECURED BONDS, DEBENTURES, NOTES, CERTIFICATES OF PARTICIPATION, CERTIFICATES OF BENEFICIAL INTEREST, CERTIFICATES OF OWNERSHIP, OR OTHER EVIDENCES OF INDEBTEDNESS OR OWNERSHIP THAT HAVE A SCHEDULED MATURITY DATE AS DETERMINED REASONABLE BY THE COMMISSION BUT NOT LATER THAN THIRTY-TWO YEARS FOLLOWING ISSUANCE, THAT ARE RATED AA OR AA2 OR BETTER BY AT LEAST ONE MAJOR INDEPENDENT CREDIT RATING AGENCY AT THE TIME OF ISSUANCE, AND THAT ARE ISSUED BY AN ELECTRIC UTILITY OR AN ASSIGNEE PURSUANT TO A FINANCING ORDER, THE PROCEEDS OF WHICH ARE USED, DIRECTLY OR INDIRECTLY, TO RECOVER, FINANCE, OR REFINANCE COMMISSION-APPROVED CO-EI COSTS AND FINANCING COSTS.

(6) "CO-EI CHARGE" MEANS A CHARGE IN AN AMOUNT AUTHORIZED BY THE COMMISSION IN A FINANCING ORDER IN ORDER TO PROVIDE A SOURCE OF REVENUE SOLELY TO REPAY, FINANCE, OR REFINANCE CO-EI COSTS AND FINANCING COSTS THAT ARE IMPOSED ON AND ARE A PART OF ALL CUSTOMER BILLS AND ARE COLLECTED IN FULL BY THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES, ITS
SUCCESSORS OR ASSIGNEES, OR A COLLECTION AGENT THROUGH A
NONBYPASSABLE CHARGE THAT IS SEPARATE AND APART FROM THE
ELECTRIC UTILITY’S BASE RATES.

(7) (a) "CO-EI COSTS" MEANS:

(I) (A) AT THE OPTION OF AND UPON PETITION BY AN ELECTRIC
UTILITY, AND AS APPROVED BY THE COMMISSION, ANY OF THE PRETAX
COSTS THAT THE ELECTRIC UTILITY HAS INCURRED OR WILL INCUR THAT
ARE CAUSED BY, ASSOCIATED WITH, OR REMAIN AS A RESULT OF THE
RETIREMENT OF AN ELECTRIC GENERATING FACILITY LOCATED IN THE
STATE.

(B) AS USED IN THIS SUBSECTION (7), "PRETAX COSTS", IF
APPROVED BY THE COMMISSION, INCLUDE, BUT ARE NOT LIMITED TO, THE
UNRECOVERED CAPITALIZED COST OF A RETIRED ELECTRIC GENERATING
FACILITY, COSTS OF DECOMMISSIONING AND RESTORING THE SITE OF THE
ELECTRIC GENERATING FACILITY, AND OTHER APPLICABLE CAPITAL AND
OPERATING COSTS, ACCRUED CARRYING CHARGES, DEFERRED EXPENSES,
REDUCTIONS FOR APPLICABLE INSURANCE AND SALVAGE PROCEEDS AND
THE COSTS OF RETIRING ANY EXISTING INDEBTEDNESS, FEES, COSTS, AND
EXPENSES TO MODIFY EXISTING DEBT AGREEMENTS OR FOR WAIVERS OR
CONSENTS RELATED TO EXISTING DEBT AGREEMENTS.

(II) AMOUNTS FOR ASSISTANCE TO AFFECTED WORKERS AND
COMMUNITIES IF APPROVED BY THE COMMISSION.

(III) PRETAX COSTS THAT AN ELECTRIC UTILITY HAS PREVIOUSLY
INCURRED RELATED TO THE COMMISSION-APPROVED CLOSURE OF AN
ELECTRIC GENERATING FACILITY OCCURRING BEFORE THE EFFECTIVE DATE
OF THIS SECTION.

(b) "CO-EI COSTS" DO NOT INCLUDE ANY MONETARY PENALTY,
(8) "CO-EI property" means:

(a) All rights and interests of an electric utility or successor or assignee of an electric utility under a financing order for the right to impose, bill, collect, and receive CO-EI charges as it is authorized to do solely under the financing order and to obtain periodic adjustments to such CO-EI charges as provided in the financing order; and

(b) All revenue, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in subsection (8)(a) of this section, regardless of whether such revenue, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenue, collections, rights to payment, payments, money, or proceeds.

(9) "CO-EI revenue" means all revenue, receipts, collections, payments, money, claims, or other proceeds arising from CO-EI property.

(10) "Commission" means the public utilities commission of the state of Colorado.

(11) "Customer" means a person that takes electric distribution or electric transmission service from an electric utility for consumption of electricity in the state. The term includes a customer's successors and assignees.
(12) "Electric utility" means an entity operating for the purpose of supplying electricity to the public for domestic, mechanical, or public uses and includes an investor-owned electric utility subject to regulation under articles 1 to 7 of this title 40, a municipally owned utility, and a cooperative electric association.

(13) "Financing costs" means, if approved by the commission in a financing order, costs to issue, service, repay, or refinance CO-EI bonds, whether incurred or paid upon issuance of the CO-EI bonds or over the life of the CO-EI bonds, and includes:

(a) principal, interest, and redemption premiums that are payable on CO-EI bonds;

(b) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to CO-EI bonds;

(c) any other costs related to issuing, supporting, repaying, refunding, and servicing CO-EI bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other demonstrable costs necessary to otherwise ensure and
GUARANTEE THE TIMELY PAYMENT OF CO-EI BONDS OR OTHER AMOUNTS
OR CHARGES PAYABLE IN CONNECTION WITH CO-EI BONDS;

(d) ANY TAXES AND LICENSE FEES IMPOSED ON THE REVENUE
GENERATED FROM THE COLLECTION OF A CO-EI CHARGE;

(e) ANY STATE AND LOCAL TAXES, INCLUDING FRANCHISE, SALES
AND USE, AND OTHER TAXES OR SIMILAR CHARGES, INCLUDING, BUT NOT
LIMITED TO, REGULATORY ASSESSMENT FEES, WHETHER PAID, PAYABLE,
OR ACCRUED; AND

(f) ANY COSTS INCURRED BY AN ELECTRIC UTILITY TO PAY THE
COMMISSION’S COSTS OF ENGAGING SPECIALIZED COUNSEL AND EXPERT
CONSULTANTS EXPERIENCED IN SECURITIZED ELECTRIC UTILITY
RATEPAYER-BACKED BOND FINANCING SIMILAR TO CO-EI BONDS AS
AUTHORIZED BY SECTION 40-41-107 (4).

(14) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION
ISSUED PURSUANT TO SECTION 40-41-106 THAT GRANTS, IN WHOLE OR IN
PART, AN APPLICATION FILED PURSUANT TO SECTION 40-41-103 AND THAT
AUTHORIZES THE ISSUANCE OF CO-EI BONDS IN ONE OR MORE SERIES, THE
IMPOSITION, CHARGING, AND COLLECTION OF CO-EI CHARGES, AND THE
CREATION OF CO-EI PROPERTY.

(15) "FINANCING PARTY" MEANS A HOLDER OF CO-EI BONDS AND
TRUSTEES, COLLATERAL AGENTS, ANY PARTY UNDER AN ANCILLARY
AGREEMENT, OR ANY OTHER PERSON ACTING FOR THE BENEFIT OF A
HOLDER OF CO-EI BONDS.

(16) "FINANCING STATEMENT" HAS THE SAME MEANING AS SET
FORTH IN SECTION 4-9-102 (39).

(17) "NONBYPASSABLE" MEANS THAT THE PAYMENT OF A CO-EI
CHARGE MAY NOT BE AVOIDED BY ANY FUTURE OR EXISTING CUSTOMER
LOCATED WITHIN AN ELECTRIC UTILITY SERVICE AREA AS SUCH SERVICE
AREA EXISTED AS OF THE DATE OF THE FINANCING ORDER OR, IF THE
FINANCING ORDER SO PROVIDES, AS SUCH SERVICE AREA MAY BE
EXPANDED, EVEN IF THE CUSTOMER ELECTS TO PURCHASE ELECTRICITY
FROM A SUPPLIER OTHER THAN THE ELECTRIC UTILITY.

(18) "SUCCESSOR" MEANS, WITH RESPECT TO ANY LEGAL ENTITY,
ANOTHER LEGAL ENTITY THAT SUCCEEDS BY OPERATION OF LAW TO THE
RIGHTS AND OBLIGATIONS OF THE FIRST LEGAL ENTITY PURSUANT TO ANY
BANKRUPTCY, REORGANIZATION, RESTRUCTURING, OTHER INSOLVENCY
PROCEEDING, MERGER, ACQUISITION, CONSOLIDATION, OR SALE OR
TRANSFER OF ASSETS, WHETHER ANY OF THESE OCCUR DUE TO A
RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY OR OTHERWISE.

SOLELY FOR THE PURPOSE OF IMPLEMENTING THIS ARTICLE 41,
"SUCCESSOR" DOES NOT INCLUDE ANY MUNICIPALLY OWNED ELECTRIC
UTILITY ESTABLISHED AND PROVIDING RETAIL ELECTRIC SERVICE BEFORE
THE DATE ON WHICH CO-EI BONDS ARE ISSUED PURSUANT TO A FINANCING
ORDER RELATING TO ELECTRIC GENERATING FACILITIES THAT SERVE OR
PREVIOUSLY SERVED THE SERVICE AREA OF THE MUNICIPALLY OWNED
ELECTRIC UTILITY.

40-41-103. Financing orders - application requirements.

(1) AN ELECTRIC UTILITY, IN ITS SOLE DISCRETION, MAY APPLY TO THE
COMMISSION FOR A FINANCING ORDER AS AUTHORIZED BY THIS SECTION.

(2) (a) AN INVESTOR-OWNED OR OTHER REGULATED ELECTRIC
UTILITY MAY FILE AN APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS
IN ONE OR MORE SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES,
AND CREATE CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN
ELECTRIC GENERATING FACILITY IN COLORADO THAT HAS PREVIOUSLY
BEEN APPROVED BY THE COMMISSION.

(b) An electric utility that is not regulated may file an application for approval to issue CO-EI bonds in one or more series, impose, charge, and collect CO-EI charges, and create CO-EI property related to the retirement of an electric generating facility in Colorado.

(c) The commission shall take final action to approve, deny, or modify any application for a financing order as described in subsection (2)(a) or (2)(b) of this section in a final order issued in accordance with the commission's rules for addressing applications.

(3)(a) An application for a financing order must include the following information:

(I) A description of the CO-EI costs that the applicant proposes to recover with the proceeds of the CO-EI bonds;

(II) An estimate of the financing costs related to the CO-EI bonds;

(III) An estimate of the CO-EI charges necessary to pay the CO-EI costs and all financing costs, and the period over which such costs will be recovered;

(IV) A proposed methodology for allocating the revenue requirement for the CO-EI charge among customer classes, including special contract customers;

(V) A description of the nonbypassable CO-EI charge required to be paid by customers within the electric utility's service area for recovery of CO-EI costs and a proposed adjustment mechanism reflecting the allocation methodology.
REFERRED TO IN SUBSECTION (3)(a)(IV) OF THIS SECTION;

(VI) An estimate of the timing of the issuance of the CO-EI bonds, or series of bonds; and

(VII) An estimate of the net projected cost savings or a demonstration of how the issuance of CO-EI bonds and the imposition of CO-EI charges would avoid or significantly mitigate rate impacts to customers as compared with traditional methods of financing and recovering CO-EI costs from customers.

(b) In addition to furnishing the information specified in subsection (3)(a) of this section, an applicant shall:

(I) Specify a future ratemaking process to reconcile any difference between the actual CO-EI costs financed by CO-EI bonds and the final CO-EI costs incurred by the utility or the assignee. The reconciliation may affect the electric utility’s base rates or any rider adopted pursuant to section 40-41-104(4), but shall not affect the amount of the bonds or the associated CO-EI charges paid by customers.

(II) Provide direct testimony supporting the application.

40-41-104. Issuance of financing orders. (1) Following notice and hearing on an application for a financing order as required by the commission’s rules, practice, and procedure, the commission may issue a financing order if the commission finds that:

(a) The CO-EI costs described in the application related to the retirement of the electric generating facilities are reasonable;
(b) The proposed issuance of CO-EI bonds and the imposition and collection of CO-EI charges;

(I) are just and reasonable;

(II) are consistent with the public interest;

(III) constitute a prudent and reasonable mechanism for the financing of the CO-EI costs described in the application; and

(IV) will provide substantial, tangible, and quantifiable net present value savings or other benefits to customers that are greater than the benefits that would have been achieved absent the issuance of CO-EI bonds; and

(c) The provisions of the financing order will ensure that the proposed structuring, marketing, and pricing of the CO-EI bonds will:

(I) lower overall costs to customers or avoid or mitigate rate impacts to customers relative to traditional methods of financing; and

(II) achieve the maximum net present value of customer savings, as determined by the commission in a financing order, consistent with market conditions at the time of sale and the terms of the financing order.

(2) The financing order must:

(a) determine the maximum amount of CO-EI costs that may be financed from proceeds of CO-EI bonds authorized to be issued by the financing order;

(b) approve a methodology for allocating the revenue requirement for the CO-EI charge among customer classes;

(c) describe the proposed customer billing mechanism for
CO-EI CHARGES AND INCLUDE A FINDING THAT THE MECHANISM IS JUST
AND REASONABLE;

(d) DESCRIBE AND ESTIMATE THE FINANCING COSTS THAT MAY BE
RECOVERED THROUGH CO-EI CHARGES AND THE PERIOD OVER WHICH THE
COSTS MAY BE RECOVERED, SUBJECT TO SECTION 40-41-105;

(e) DETERMINE WHETHER THE PROPOSED STRUCTURING, EXPECTED
PRICING, AND FINANCING COSTS OF CO-EI BONDS HAVE A SIGNIFICANT
LIKELIHOOD OF LOWERING OVERALL COSTS TO CUSTOMERS OR AVOIDING
OR SIGNIFICANTLY MITIGATING RATE IMPACTS TO CUSTOMERS AS
COMPAED WITH TRADITIONAL METHODS OF FINANCING AND RECOVERING
CO-EI COSTS FROM CUSTOMERS. A FINANCING ORDER MUST PROVIDE
DETAILED FINDINGS OF FACT ADDRESSING COST-EFFECTIVENESS AND
ASSOCIATED RATE IMPACTS UPON CUSTOMERS AND CUSTOMER CLASSES.

(f) REQUIRE THE IMPOSITION AND COLLECTION OF THE
NON-BYPASSABLE CO-EI CHARGES AUTHORIZED UNDER A FINANCING
ORDER FOR THE PERIOD SPECIFIED IN SUBSECTION (2)(d) OF THIS SECTION;

(g) DESCRIBE THE CO-EI PROPERTY THAT MAY BE CREATED IN
FAVOR OF THE UTILITY AND ITS SUCCESSORS AND ASSIGNEES AND THAT
WILL BE USED TO PAY, AND SECURE THE PAYMENT OF, THE CO-EI BONDS
AND FINANCING COSTS AUTHORIZED IN THE FINANCING ORDER;

(h) AUTHORIZE AND APPROVE AN ADJUSTMENT MECHANISM
REFLECTING THE ALLOCATION METHODOLOGY SPECIFIED IN SUBSECTION
(2)(b) OF THIS SECTION;

(i) AUTHORIZE THE APPLICANT ELECTRIC UTILITY TO FINANCE
CO-EI COSTS THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF CO-EI
BONDS. AN ELECTRIC UTILITY IS NOT REQUIRED TO SECURE A SEPARATE
FINANCING ORDER FOR EACH ISSUANCE OF CO-EI BONDS OR FOR EACH
SCHEDULED PHASE OF THE PREVIOUSLY APPROVED RETIREMENT OF
ELECTRIC GENERATING FACILITIES APPROVED IN THE FINANCING ORDER;

(j) Include any additional findings or conclusions deemed
appropriate by the Commission;

(k) Specify the degree of flexibility afforded to the
electric utility in establishing the terms and conditions of the
CO-EI Bonds, including, but not limited to, repayment schedules,
expected interest rates, and other financing costs;

(l) Specify the timing of actions required by the order,
including:

(I) The timing of issuance of the CO-EI Bonds, independent
of the schedule of retirement of the electric generating
facility;

(II) The energy assistance funds, if included in the bond
issue, may be transferred to a third-party entity designated by
the commission to administer transition assistance on behalf of
displaced workers and affected communities no later than the
date on which the electric generating facility ceases operation;

and

(III) The applicant electric utility files to reduce its rates
as required in subsection (4) of this section simultaneously with
the inception of the CO-EI charges and independently of the
schedule of closing and decommissioning of the electric
generating facility; and

(m) Specify a future ratemaking process to reconcile any
difference between the actual CO-EI costs financed by CO-EI
bonds and the final CO-EI costs incurred by the utility or the
ASSIGNEE. THE RECONCILIATION MAY AFFECT THE ELECTRIC UTILITY’S BASE RATES OR ANY RIDER ADOPTED PURSUANT TO SUBSECTION (4) OF THIS SECTION, BUT SHALL NOT AFFECT THE AMOUNT OF THE BONDS OR THE ASSOCIATED CO-EI CHARGES PAID BY CUSTOMERS.

(3) A FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MUST PERMIT AND MAY REQUIRE THE CREATION OF AN ELECTRIC UTILITY’S CO-EI PROPERTY PURSUANT TO SUBSECTION (2)(g) OF THIS SECTION TO BE CONDITIONED UPON, AND SIMULTANEOUS WITH, THE SALE OR OTHER TRANSFER OF THE CO-EI PROPERTY TO AN ASSIGNEE AND THE PLEDGE OF THE CO-EI PROPERTY TO SECURE CO-EI BONDS.

(4) A FINANCING ORDER MUST REQUIRE THE APPLICANT ELECTRIC UTILITY, SIMULTANEOUSLY WITH THE INCEPTION OF THE COLLECTION OF CO-EI CHARGES, TO REDUCE ITS RATES THROUGH A REDUCTION IN BASE RATES OR BY A NEGATIVE RIDER ON CUSTOMER BILLS IN AN AMOUNT EQUAL TO THE REVENUE REQUIREMENT ASSOCIATED WITH THE UTILITY ASSETS BEING FINANCED BY CO-EI BONDS.

(5) IN A FINANCING ORDER, THE COMMISSION MAY INCLUDE ANY CONDITIONS THAT ARE NECESSARY TO PROMOTE THE PUBLIC INTEREST AND MAY GRANT RELIEF THAT IS DIFFERENT FROM THAT WHICH WAS REQUESTED IN THE APPLICATION SO LONG AS THE RELIEF IS WITHIN THE SCOPE OF THE MATTERS ADDRESSED IN THE COMMISSION’S NOTICE OF THE APPLICATION.

40-41-105. Effect of financing order. (1) A FINANCING ORDER REMAINS IN EFFECT UNTIL THE CO-EI BONDS ISSUED AS AUTHORIZED BY THE FINANCING ORDER HAVE BEEN PAID IN FULL AND ALL FINANCING COSTS RELATING TO THE CO-EI BONDS HAVE BEEN PAID IN FULL.

(2) A FINANCING ORDER REMAINS IN EFFECT AND UNABATED
NOTWITHSTANDING THE BANKRUPTCY, REORGANIZATION, OR INSOLVENCY OF THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES OR ANY AFFILIATE OF THE ELECTRIC UTILITY OR SUCCESSOR ENTITY OR ASSIGNEE.

(3) SUBJECT TO JUDICIAL REVIEW AS PROVIDED FOR IN SECTION 40-41-108, A FINANCING ORDER IS IRREVOCABLE. THEREFORE, NOTWITHSTANDING SECTION 40-6-112 (1), THE COMMISSION MAY NOT REDUCE, IMPAIR, POSTPONE, OR TERMINATE CO-EI CHARGES APPROVED IN A FINANCING ORDER OR IMPAIR CO-EI PROPERTY OR THE COLLECTION OR RECOVERY OF CO-EI REVENUE.

(4) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, UPON THE REQUEST OF AN ELECTRIC UTILITY OR AT THE REQUEST OF PARTIES IN THE COMMISSION PROCEEDING, THE COMMISSION MAY COMMENCE A PROCEEDING AND ISSUE A SUBSEQUENT FINANCING ORDER THAT PROVIDES FOR REFINANCING, RETIRING, OR REFUNDING CO-EI BONDS ISSUED PURSUANT TO THE ORIGINAL FINANCING ORDER IF:

(a) THE COMMISSION MAKES ALL OF THE FINDINGS SPECIFIED IN SECTION 40-41-104 (1) WITH RESPECT TO THE SUBSEQUENT FINANCING ORDER; AND

(b) THE SUBSEQUENT FINANCING ORDER DOES NOT IMPAIR IN ANY WAY THE COVENANTS AND TERMS OF THE CO-EI BONDS TO BE REFINANCED, RETIRED, OR REFUNDED.

40-41-106. Effect on commission jurisdiction. (1) Except as otherwise provided in subsection (2) of this section, if the commission issues a financing order to an electric utility, the commission shall not, in exercising its powers and carrying out its duties pursuant to this article 41:
(a) Consider the CO-EI bonds issued pursuant to the financing order to be debt of the electric utility other than for income tax purposes;

(b) Consider the CO-EI charges paid under the financing order to be revenue of the electric utility;

(c) Consider the CO-EI costs or financing costs specified in the financing order to be the regulated costs or assets of the electric utility; or

(d) Determine any prudent action taken by an electric utility that is consistent with the financing order to be unjust or unreasonable.

(2) Nothing in subsection (1) of this section:

(a) Prevents or precludes the commission from investigating the compliance of an electric utility with the terms and conditions of a financing order and requiring compliance with the financing order; or

(b) Prevents or precludes the commission from imposing regulatory sanctions against a regulated electric utility for failure to comply with the terms and conditions of a financing order or the requirements of this article 41.

(3) The commission may not refuse to allow the recovery of any costs associated with the retirement of electric generating facilities by an electric utility solely because the electric utility has elected to finance those activities through a financing mechanism other than CO-EI bonds, whether or not a financing order with respect to such costs has been applied for by the utility or issued by the commission.
40-41-107. Electric utility customer protection. (1) In addition to any other authority of the commission;

(a) The commission may attach such conditions to the approval of a financing order as the commission deems appropriate to maximize the benefits and minimize the risks of the transaction to customers, directly impacted Colorado workers and communities, and the electric utility;

(b) The commission may specify in the financing order a process to structure, market, and price CO-EI bonds, including the selection of the underwriter or underwriters, in a manner consistent with the public interest and the legal obligations of the electric utility;

(c) The commission shall review and determine the reasonableness of all proposed up-front and ongoing financing costs;

(d) The commission shall determine how it will engage to ensure that the issuance of the CO-EI bonds maximizes net present value customer savings, consistent with market conditions at the time of issuance and the terms of the financing order; and

(e) The commission has the authority required to perform comprehensive due diligence in its evaluation of an application for a financing order and has the authority to oversee the process used to structure, market, and price CO-EI bonds.

(2) Alternative financing mechanisms may result in lower costs to electric utility customers. It is helpful to provide alternative financing mechanisms to be utilized by utilities as
OPTIONS FOR REDUCING THE TOTAL AMOUNT OF COSTS BEING INCLUDED
IN CUSTOMER RATES RESULTING FROM ACCELERATING THE RETIREMENT
OF ELECTRIC GENERATING FACILITIES.

(3) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ISSUANCE OF
CO-EI BONDS, THE APPLICANT SHALL FILE WITH THE COMMISSION
INFORMATION REGARDING THE ACTUAL UP-FRONT ISSUANCE COSTS OF THE
CO-EI BONDS. THE COMMISSION SHALL REVIEW, ON A REASONABLY
COMPAREABLE BASIS, SUCH INFORMATION TO DETERMINE IF THE ISSUANCE
RESULTED IN THE LOWEST OVERALL COSTS THAT WERE REASONABLY
CONSISTENT WITH BOTH MARKET CONDITIONS AT THE TIME OF THE
ISSUANCE AND THE TERMS OF THE FINANCING ORDER. THE COMMISSION
MAY DISALLOW INCREMENTAL UP-FRONT ISSUANCE COSTS IN EXCESS OF
THE LOWEST OVERALL COSTS BY REQUIRING THE ELECTRIC UTILITY TO
MAKE A CREDIT IN AN AMOUNT EQUAL TO THE EXCESS OF ACTUAL
ISSUANCE COSTS INCURRED, AND PAID FOR OUT OF CO-EI BOND PROCEEDS,
AND THE LOWEST OVERALL ISSUANCE COSTS AS DETERMINED BY THE
COMMISSION. THE COMMISSION MAY NOT MAKE ADJUSTMENTS TO THE
CO-EI CHARGES FOR ANY SUCH EXCESS UP-FRONT ISSUANCE COSTS.

(4) IN PERFORMING ITS RESPONSIBILITIES UNDER THIS ARTICLE
41, THE COMMISSION MAY ENGAGE OUTSIDE CONSULTANTS AND COUNSEL,
SELECTED BY THE COMMISSION, WHO ARE EXPERIENCED IN SECURITIZED
ELECTRIC UTILITY RATEPAYER-BACKED BOND FINANCING SIMILAR TO
CO-EI BONDS. THESE OUTSIDE CONSULTANTS AND COUNSEL HAVE A DUTY
OF LOYALTY SOLELY TO THE COMMISSION, MUST NOT HAVE ANY
FINANCIAL INTEREST IN THE CO-EI BONDS, AND SHALL NOT PARTICIPATE
IN THE UNDERWRITING OR SECONDARY MARKET TRADING OF THE CO-EI
BONDS. THE EXPENSES ASSOCIATED WITH ANY ENGAGEMENT SHALL BE
PAID BY THE APPLICANT UTILITY AND SHALL BE INCLUDED AS FINANCING
COSTS AND INCLUDED IN THE CO-EI CHARGE, ARE NOT AN OBLIGATION OF
THE STATE, AND ARE ASSIGNED SOLELY TO THE TRANSACTION.

(5) IF AN ELECTRIC UTILITY'S APPLICATION FOR A FINANCING
ORDER IS DENIED OR WITHDRAWN OR FOR ANY REASON NO CO-EI BONDS
ARE ISSUED, ANY COSTS OF RETAINING EXPERT CONSULTANTS AND
COUNSEL ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY
SUBSECTION (4) OF THIS SECTION AND APPROVED BY THE COMMISSION,
SHALL BE PAID BY THE APPLICANT ELECTRIC UTILITY AND SHALL BE
ELIGIBLE FOR RECOVERY BY THE ELECTRIC UTILITY, INCLUDING CARRYING
COSTS, IN THE ELECTRIC UTILITY'S FUTURE RATES.

ORDER IS A FINAL ORDER OF THE COMMISSION. NOTWITHSTANDING
SECTION 40-6-115 (5) SPECIFYING PROPER VENUE FOR PETITION FILINGS,
A PARTY AGGRIEVED BY THE ISSUANCE OF A FINANCING ORDER MAY
PETITION FOR SUSPENSION AND REVIEW OF THE FINANCING ORDER ONLY IN
THE DISTRICT COURT FOR THE CITY AND COUNTY OF Denver. IN THE CASE
OF ANY PETITION FOR SUSPENSION AND REVIEW, THE COURT SHALL
PROCEED TO HEAR AND DETERMINE THE ACTION AS EXPEDITIOUSLY AS
PRACTICABLE AND SHALL GIVE THE ACTION PRECEDENCE OVER OTHER
MATTERS NOT ACCORDED SIMILAR PRECEDENCE BY LAW.

40-41-109. Electric utilities - duties. (1) THE ELECTRIC BILLS OF
AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER AND
CAUSED CO-EI BONDS TO BE ISSUED:

(a) MUST EXPLICITLY REFLECT THAT A PORTION OF THE CHARGES
ON THE BILL REPRESENTS CO-EI CHARGES APPROVED IN A FINANCING
ORDER ISSUED TO THE ELECTRIC UTILITY AND, IF THE CO-EI PROPERTY
HAS BEEN TRANSFERRED TO AN ASSIGNEE, MUST INCLUDE A STATEMENT
THAT THE ASSIGNEE IS THE OWNER OF THE RIGHTS TO CO-EI CHARGES
AND THAT THE ELECTRIC UTILITY OR OTHER ENTITY, IF APPLICABLE, IS
ACTING AS A COLLECTION AGENT OR SERVICER FOR THE ASSIGNEE;

(b) MUST INCLUDE THE CO-EI CHARGE ON EACH CUSTOMER'S BILL
AS A SEparate LINE ITEM TITLED "ENERGY IMPACT ASSISTANCE CHARGE"
AND MAY INCLUDE BOTH THE RATE AND THE AMOUNT OF THE CHARGE ON
Each BILL. THE FAILURE OF AN ELECTRIC UTILITY TO COMPLY WITH THIS
SUBSECTION (1) DOES NOT INVALIDATE, IMPAIR, OR AFFECT ANY
FINANCING ORDER, CO-EI PROPERTY, CO-EI CHARGE, OR CO-EI BONDS,
BUT MAY SUBJECT THE ELECTRIC UTILITY TO PENALTIES UNDER
APPLICABLE COMMISSION RULES; AND

(c) MUST EXPLAIN TO CUSTOMERS IN AN ANNUAL FILING WITH THE
COMMISSION THE RATE IMPACT THAT FINANCING THE RETIREMENT OF
ELECTRIC GENERATING FACILITIES WILL HAVE ON CUSTOMER RATES.

(2) AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER
AND CAUSED CO-EI BONDS TO BE ISSUED MUST DEMONSTRATE IN AN
ANNUAL FILING WITH THE COMMISSION THAT CO-EI BOND PROCEEDS ARE
APPLIED SOLELY TO THE REPAYMENT OF CO-EI COSTS AND THAT CO-EI
REVENUES ARE APPLIED SOLELY TO THE REPAYMENT OF CO-EI BONDS AND
OTHER FINANCING COSTS IN ACCORDANCE WITH THE FINANCING ORDER.
The COST OF SUCH ANNUAL FILING IS A FINANCING COST RECOVERABLE BY
THE ELECTRIC UTILITY FROM THE CO-EI CHARGE.

40-41-110. CO-EI property. (1) CO-EI PROPERTY THAT IS
DESCRIBED IN A FINANCING ORDER CONSTITUTES AN EXISTING PRESENT
PROPERTY RIGHT OR INTEREST IN AN EXISTING PRESENT PROPERTY RIGHT
EVEN THOUGH THE IMPOSITION AND COLLECTION OF CO-EI CHARGES
DEPENDS ON THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER IS
ISSUED PERFORMING ITS SERVICING FUNCTIONS RELATING TO THE
COLLECTION OF CO-EI CHARGES AND ON FUTURE ELECTRICITY
CONSUMPTION. THE PROPERTY RIGHT OR INTEREST EXISTS REGARDLESS OF
WHETHER THE REVENUES OR PROCEEDS ARISING FROM THE CO-EI
PROPERTY HAVE BEEN BILLED, HAVE ACCRUED, OR HAVE BEEN COLLECTED
AND NOTWITHSTANDING THE FACT THAT THE VALUE OR AMOUNT OF THE
PROPERTY RIGHT OR INTEREST IS DEPENDENT ON THE FUTURE PROVISION
OF SERVICE TO CUSTOMERS BY THE ELECTRIC UTILITY OR A SUCCESSOR OR
ASSIGNEE OF THE ELECTRIC UTILITY.

(2) CO-EI PROPERTY DESCRIBED IN A FINANCING ORDER EXISTS
UNTIL ALL CO-EI BONDS ISSUED PURSUANT TO THE FINANCING ORDER ARE
PAID IN FULL AND ALL FINANCING COSTS AND OTHER COSTS OF THE CO-EI
BONDS HAVE BEEN RECOVERED IN FULL.

(3) ALL OR ANY PORTION OF CO-EI PROPERTY DESCRIBED IN A
FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MAY BE TRANSFERRED,
SOLD, CONVEYED, OR ASSIGNED TO A SUCCESSOR OR ASSIGNEE THAT IS
WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY THE ELECTRIC UTILITY
AND IS CREATED FOR THE LIMITED PURPOSE OF ACQUIRING, OWNNG, OR
ADMINISTERING CO-EI PROPERTY OR ISSUING CO-EI BONDS AS
AUTHORIZED BY THE FINANCING ORDER. ALL OR ANY PORTION OF CO-EI
PROPERTY MAY BE PLEDGED TO SECURE CO-EI BONDS ISSUED PURSUANT
TO A FINANCING ORDER, AMOUNTS PAYABLE TO FINANCING PARTIES AND
TO COUNTERPARTIES UNDER ANY ANCILLARY AGREEMENTS, AND OTHER
FINANCING COSTS. EACH TRANSFER, SALE, CONVEYANCE, ASSIGNMENT, OR
PLEDGE BY AN ELECTRIC UTILITY OR AN AFFILIATE OF AN ELECTRIC
UTILITY IS A TRANSACTION IN THE NORMAL COURSE OF BUSINESS FOR
PURPOSES OF SECTION 40-5-105 (1)(a).

(4) IF AN ELECTRIC UTILITY DEFAULTS ON ANY REQUIRED PAYMENT OF CHARGES ARISING FROM CO-EI PROPERTY DESCRIBED IN A FINANCING ORDER, A COURT, UPON APPLICATION BY AN INTERESTED PARTY AND WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE APPLYING PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE REVENUE ARISING FROM THE CO-EI PROPERTY TO THE FINANCING PARTIES. ANY SUCH FINANCING ORDER REMAINS IN FULL FORCE AND EFFECT NOTWITHSTANDING ANY REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY PROCEEDINGS WITH RESPECT TO THE ELECTRIC UTILITY OR ITS SUCCESSORS OR ASSIGNEES.

(5) THE INTEREST OF A TRANSFEREE, PURCHASER, ACQUIRER, ASSIGNEE, OR PLEDGEE IN CO-EI PROPERTY SPECIFIED IN A FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY, AND IN THE REVENUE AND COLLECTIONS ARISING FROM THAT PROPERTY, IS NOT SUBJECT TO SETOFF, COUNTERCLAIM, SURCHARGE, OR DEFENSE BY THE ELECTRIC UTILITY OR ANY OTHER PERSON OR IN CONNECTION WITH THE REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY OF THE ELECTRIC UTILITY OR ANY OTHER ENTITY.

(6) A SUCCESSOR TO AN ELECTRIC UTILITY, WHETHER PURSUANT TO ANY REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY PROCEEDING OR WHETHER PURSUANT TO ANY MERGER OR ACQUISITION, SALE, OTHER BUSINESS COMBINATION, OR TRANSFER BY OPERATION OF LAW, AS A RESULT OF ELECTRIC UTILITY RESTRUCTURING OR OTHERWISE, SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF, AND HAS THE SAME DUTIES AND RIGHTS UNDER A FINANCING ORDER AS, THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES AND SHALL PERFORM THE
DUTIES AND EXERCISE THE RIGHTS IN THE SAME MANNER AND TO THE
SAME EXTENT AS THE ELECTRIC UTILITY, INCLUDING COLLECTING AND
PAYING TO ANY PERSON ENTITLED TO RECEIVE THEM THE REVENUES,
collections, payments, or proceeds of CO-EI property described
in the financing order.

40-41-111. CO-EI bonds - legal investments - not public debt
- pledge of state. (1) Banks, trust companies, savings and loan
associations, insurance companies, executors, administrators,
guardians, trustees, and other fiduciaries may legally invest
any money within their control in CO-EI bonds. Public entities,
as defined in section 24-75-601 (1), may invest public funds in
CO-EI bonds only if the CO-EI bonds satisfy the investment
requirements established in part 6 of article 75 of title 24.

(2) CO-EI bonds issued as authorized by a financing order
are not debt of or a pledge of the faith and credit or taxing
power of the state, any agency of the state, or any county,
municipality, or other political subdivision of the state. Holders
of CO-EI bonds have no right to have taxes levied by the state
or by any county, municipality, or other political subdivision of
the state for the payment of the principal or interest on CO-EI
bonds. The issuance of CO-EI bonds does not directly, indirectly,
or contingently obligate the state or a political subdivision of
the state to levy any tax or make any appropriation for payment
of principal or interest on the CO-EI bonds.

(3) (a) The state pledges to and agrees with holders of
CO-EI bonds, any assignee, and any financing parties that the
state will not:
(I) Take or permit any action that impairs the value of CO-EI property; or

(II) Reduce, alter, or impair CO-EI charges, except through application of the adjustment mechanism, that are imposed, collected, and remitted for the benefit of holders of CO-EI bonds, any assignee, and any financing parties, until any principal, interest, and redemption premium payable on CO-EI bonds, all financing costs, and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid in full.

(b) A person who issues CO-EI bonds may include the pledge specified in subsection (3)(a) of this section in the CO-EI bonds, ancillary agreements, and documentation related to the issuance and marketing of the CO-EI bonds.

40-41-112. Assignee or financing party not automatically subject to commission regulation. An electric utility, assignee, or financing party that is not already regulated by the commission does not become subject to commission regulation solely as a result of engaging in any transaction authorized by or described in this article 41.

40-41-113. Effect of other laws and judicial decisions. (1) If any provision of this article 41 conflicts with any other law regarding the attachment, assignment, perfection, effect of perfection, or priority of any security interest in or transfer of CO-EI property, the provision of this article 41 governs to the extent of the conflict.

(2) Effective on the date that CO-EI bonds are first issued,
If any provision of this Article 41 is held to be invalid or is invalidated, superseeded, replaced, repealed, or expires, that occurrence does not affect any action allowed under this Article 41 that was lawfully taken by the Commission, an electric utility, an assignee, a collection agent, a financing party, a bondholder, or a party to an ancillary agreement before the occurrence, and any such action remains in full force and effect.

(3) Nothing in subsection (1) or (2) of this section precludes an electric utility for which the Commission has initially issued a financing order from applying to the Commission for:

(a) A subsequent financing order amending the financing order as authorized by section 40-41-105 (4); or

(b) Approval of the issuance of CO-EI bonds to refund all or a portion of an outstanding series of CO-EI bonds.

40-41-114. Choice of law. The laws of this state govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in any CO-EI property, CO-EI charge, or financing order.

40-41-115. Security interests in CO-EI property. (1) The creation, perfection, and enforcement of any security interest in CO-EI property to secure the repayment of the principal of and interest on CO-EI bonds, amounts payable under any ancillary agreement, and other financing costs are governed by this section and not by the "Uniform Commercial Code", title 4.
(2) The description or indication of CO-EI property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to this article 41 and the financing order creating the CO-EI property.

(3) (a) A security interest in CO-EI property is created, valid, and binding as soon as all of the following events have occurred:

(I) The financing order that describes the CO-EI property is issued;

(II) A security agreement is executed and delivered; and

(III) Value is received for the CO-EI bonds.

(b) Once a security interest in CO-EI property is created under subsection (3)(a) of this section, the security interest attaches without any physical delivery of collateral or any other act. The lien of the security interest is valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether such parties have notice of the lien, upon the filing of a financing statement with the secretary of state. The secretary of state shall maintain a financing statement filed pursuant to this subsection (3)(b) in the same manner in which the secretary maintains and in the same record-keeping system in which the secretary maintains financing statements filed pursuant to article 9 of title 4. The filing of any financing statement pursuant to this subsection (3)(b) is governed by article 9 of title 4 regarding the filing of
FINANCING STATEMENTS.

(4) A security interest in CO-EI property is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, which may subsequently attach to the CO-EI property unless the holder of the security interest has agreed in writing otherwise.

(5) The priority of a security interest in CO-EI property is not affected by the commingling of CO-EI property or CO-EI revenue with other money. An assignee, bondholder, or financing party has a perfected security interest in the amount of all CO-EI property or CO-EI revenue that is pledged for the payment of CO-EI bonds even if the CO-EI property or CO-EI revenue is deposited in a cash or deposit account of the electric utility in which the CO-EI revenue is commingled with other money, and any other security interest that applies to the other money does not apply to the CO-EI revenue.

(6) Neither a subsequent order of the commission amending a financing order as authorized by section 40-41-105 (4), nor application of an adjustment mechanism as authorized by section 40-41-104 (2)(h), affects the validity, perfection, or priority of a security interest in or transfer of CO-EI property.

40-41-116. Sales of CO-EI property. (1) (a) A sale, assignment, or transfer of CO-EI property is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, and under the CO-EI property if the documents governing the transaction expressly state that the transaction is a sale or
OTHER ABSOLUTE TRANSFER. A transfer of an interest in CO-EI
PROPERTY MAY BE CREATED ONLY WHEN ALL OF THE FOLLOWING HAVE
OCCURRED:

(I) THE FINANCING ORDER CREATING AND DESCRIBING THE CO-EI
PROPERTY HAS BECOME EFFECTIVE;

(II) THE DOCUMENTS EVIDENCING THE TRANSFER OF THE CO-EI
PROPERTY HAVE BEEN EXECUTED AND DELIVERED TO THE ASSIGNEE; AND

(III) VALUE IS RECEIVED.

(b) UPON THE FILING OF A FINANCING STATEMENT WITH THE
SECRETARY OF STATE, A TRANSFER OF AN INTEREST IN CO-EI PROPERTY
IS PERFECTED AGAINST ALL THIRD PERSONS, INCLUDING ANY JUDICIAL LIEN
OR OTHER LIEN CREDITORS OR ANY CLAIMS OF THE SELLER OR CREDITORS
OF THE SELLER, OTHER THAN CREDITORS HOLDING A PRIOR SECURITY
INTEREST, OWNERSHIP INTEREST, OR ASSIGNMENT IN THE CO-EI PROPERTY
PREVIOUSLY PERFECTED IN ACCORDANCE WITH THIS SUBSECTION (I) OR
SECTION 40-41-115. THE SECRETARY OF STATE SHALL MAINTAIN A
FINANCING STATEMENT FILED PURSUANT TO THIS SUBSECTION (1)(b) IN
THE SAME MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE
SAME RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS
FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE
FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION
(1)(b) IS GOVERNE12D BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF
FINANCING STATEMENTS.

(2) THE CHARACTERIZATION OF A SALE, ASSIGNMENT, OR
TRANSFER AS AN ABSOLUTE TRANSFER AND TRUE SALE AND THE
CORRESPONDING CHARACTERIZATION OF THE PROPERTY INTEREST OF THE
ASSIGNEE IS NOT AFFECTED OR IMPAIRED BY THE EXISTENCE OR
OCCURRENCE OF ANY OF THE FOLLOWING;

(a) COMMINGLING OF CO-EI REVENUE WITH OTHER MONEY;

(b) THE RETENTION BY THE SELLER OF:

(I) A PARTIAL OR RESIDUAL INTEREST, INCLUDING AN EQUITY INTEREST, IN THE CO-EI PROPERTY, WHETHER DIRECT OR INDIRECT, OR WHETHER SUBORDINATE OR OTHERWISE; OR

(II) THE RIGHT TO RECOVER COSTS ASSOCIATED WITH TAXES, FRANCHISE FEES, OR LICENSE FEES IMPOSED ON THE COLLECTION OF CO-EI REVENUE;

(c) ANY RECOURSE THAT THE PURCHASER MAY HAVE AGAINST THE SELLER;

(d) ANY INDEMNIFICATION RIGHTS, OBLIGATIONS, OR REPURCHASE RIGHTS MADE OR PROVIDED BY THE SELLER;

(e) AN OBLIGATION OF THE SELLER TO COLLECT CO-EI REVENUES ON BEHALF OF AN ASSIGNEE;

(f) THE TREATMENT OF THE SALE, ASSIGNMENT, OR TRANSFER FOR TAX, FINANCIAL REPORTING, OR OTHER PURPOSES;

(g) ANY SUBSEQUENT FINANCING ORDER AMENDING A FINANCING ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR

(h) ANY APPLICATION OF AN ADJUSTMENT MECHANISM AS AUTHORIZED BY SECTION 40-41-104 (2)(h).

SECTION 7. Severability. If any provision of this act or the application thereof to any person, circumstance, or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity does not affect the constitutionality or validity of any other provision of this act or its application or validity to any person, circumstance, or transaction, including, without limitation,
the irrevocability of a financing order issued pursuant to this act, the validity of the issuance of CO-EI bonds, the imposition of CO-EI charges, the transfer or assignment of CO-EI property, or the collection and recovery of CO-EI charges. To these ends, the general assembly hereby declares that the provisions of this act are intended to be severable and that the general assembly would have enacted this section even if any provision of this act held to be unconstitutional or invalid had not been included in the act.

SECTION 8. Appropriation. (1) For the 2019-20 state fiscal year, $171,541 is appropriated to the department of public health and environment for use by the air pollution control division. This appropriation is from the general fund. To implement this act, the division may use this appropriation as follows:

(a) $160,140 for personal services related to stationary sources, which amount is based on an assumption that the division will require an additional 1.9 FTE; and

(b) $11,401 for operating expenses related to stationary sources.

SECTION 9. Applicability. This act applies to conduct, including power purchase agreements entered into and utility rate-based property development, occurring on or after the effective date of this act.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.